



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF R-M-P-

DATE: NOV. 23, 2015

APPEAL OF OAKLAND PARK FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of Trinidad and Tobago, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(h), 8 U.S.C. § 1182(h). The Field Office Director, Oakland Park, Florida, denied the application. The matter is now before us on appeal. The appeal will be sustained.

On November 14, 2014, the Director determined that the Applicant was inadmissible for having committed a controlled substance violation. The Director further determined that the Applicant had not established that refusal of admission to the United States would result in extreme hardship to a qualifying relative. The Form I-601 was denied accordingly.

On appeal, the Applicant submits a brief, an affidavit from the Applicant's spouse, medical documentation, financial documentation, information about country conditions in Trinidad and Tobago, and biographic documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2) of the Act states in pertinent part:

- (A) Conviction of certain crimes. –
  - (i) In general. – Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
    - .....
    - (II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

(b)(6)

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Section 212(h) of the Act provides, in pertinent part:

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .

....

- (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

In this case, the record establishes that on [REDACTED] 2007, the Applicant was convicted under Florida Statutes Annotated § 893.13(6)(b) of possession of 20 grams or less of cannabis. The Applicant is therefore inadmissible under section 212(a)(2)(A)(i)(II) for having committed a controlled substance violation. A section 212(h) waiver for a controlled substance offense is only available for a single offense of simple possession of 30 grams or less of marijuana. As the record establishes that the Applicant's conviction was for possession of 20 grams or less of cannabis, the Applicant is eligible to apply for a section 212(h) waiver.

A waiver of inadmissibility under section 212(h) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse, parent, or child of the Applicant. The record establishes that the Applicant's U.S. citizen spouse and child are the only qualifying relatives in this case. Hardship to the Applicant can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the Applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

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*Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Reg'l Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido v. I.N.S.*, 138 F.3d 1292, 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The Applicant's U.S. citizen spouse asserts that she will experience extreme hardship if she remains in the United States while the Applicant relocates abroad as a result of his inadmissibility. The Applicant's spouse maintains that she has been together with the Applicant for six years and that he has been a good father to her child, who is from a prior relationship. She indicates that her child has Attention Deficit Hyperactivity Disorder (ADHD) and behavioral issues, and she worries that

separation from the Applicant will cause her child considerable emotional harm. The Applicant's wife also states that she provides daily care for her elderly U.S. citizen parents. She indicates that her father has dementia and attempted to take his own life, and she worries that without the Applicant's support she will not be able to take care of her parents. She further declares that she receives no financial support from her child's biological father and does not have a steady job, and has increasing anxiety that without the Applicant's income she will not be able to support herself and her child. She asserts that the Applicant will not be able to support them from abroad because he has few family contacts in Trinidad and will have difficulty finding a job. In his own statement, the Applicant asserts that in the United States he is able to provide a good home for his family.

In support of emotional and financial hardship, the Applicant provided income tax records establishing that he provided financial support for his spouse and child, and wage records demonstrating that he earned \$16 an hour working at a bank. The Applicant also provided an individual education plan regarding his child and evidence that establishes that his child takes medication for ADHD. Tax documentation also establishes that the child is claimed as a dependent on the Applicant's and his spouse's tax returns. In this case, the record establishes that were the Applicant to relocate abroad, his spouse will have to take on the combined burdens of breadwinner and caregiver for herself and her child, thereby causing her hardship. In addition, she would not be able to continue providing day-to-day care for her elderly parents, further increasing her hardship. Based on a totality of the circumstances, the record establishes that the Applicant's spouse will experience extreme hardship if she remains in the United States while the Applicant relocates abroad.

As to relocation abroad with the Applicant as a result of inadmissibility, the Applicant's spouse worries that the Applicant will not be able to support them, her child's special educational needs will not be met, and her child will lose the supplemental security income benefits which he now receives. She declares that her child's biological father has shared custody and will not allow her child to move abroad. The Applicant's wife also states that she has anxiety about leaving her elderly parents who need her help. She declares that she has spent her entire life in the United States and her relatives live in the United States. In his own statement, the Applicant states that his spouse does not have any ties to Trinidad and Tobago, and will lose her child's health insurance and financial support.

The Applicant has submitted evidence establishing that the U.S. Department of State has issued a report on Trinidad and Tobago stating that medical care is significantly below U.S. standards, medications are limited, and doctors and hospitals take only cash for services. He also provided a U.S. Department of State Country Report on Human Rights Practices in Trinidad and Tobago which indicates that its national minimum wage is low. He further provided a U.S. Department of State crime and safety report demonstrating that violent crime in Trinidad and Tobago is problematic.

The record demonstrates that the Applicant's spouse was born and raised in the United States and has never been to her spouse's native country. She is unfamiliar with the country, culture and customs. Long-term separation from her community, her parents, siblings and extended relatives, as well as the medical professionals familiar with her child's treatment plan and the educational

professionals family with his special education needs, will cause her considerable hardship. When the evidence is considered together, the record establishes that the Applicant's spouse will experience extreme hardship if she relocates abroad with the Applicant.

The Applicant has established that the bar to admission would result in extreme hardship to his qualifying relative spouse and child. We now address whether the Applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez*, 21 I&N Dec. 296, 301 (BIA 1996). We must "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300.

The favorable factors in this matter are the hardship the Applicant's U.S. citizen spouse and child would face if the waiver application were denied, the Applicant's residence of more than 15 years in the United States, the Applicant's family and community ties, his gainful employment, his payment of taxes, the Applicant's remorse for his actions, support letters on behalf of the Applicant, and the Applicant's apparent lack of a criminal record since 2007. The unfavorable factors in this matter are the Applicant's criminal record, the Applicant's placement in removal proceedings, and periods of unlawful presence and employment in the United States. In this case, when the favorable factors are considered together, they outweigh the adverse factors such that a favorable exercise of discretion is warranted.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Applicant has met that burden.

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**ORDER:** The appeal is sustained.

Cite as *Matter of R-M-P-*, ID# 14500 (AAO Nov. 23, 2015)